

C BAR C RANCH PARTNERSHIP

IBLA 91-362

Decided April 21, 1995

Appeal from a decision of the Grand Junction District Office, Bureau of Land Management, determining fair market rental value for land-use permit COC-50465 and requiring payment of rental.

Affirmed.

1. Appraisals—Federal Land Policy and Management Act of 1976: Permits

An appraisal of fair market value for a land-use permit issued pursuant to sec. 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), will be affirmed unless an appellant either demonstrates error in the appraisal method or presents convincing evidence that the charge is excessive.

APPEARANCES: William M. Silberstein, Esq., Denver, Colorado, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

C Bar C Ranch Partnership (C Bar C) has appealed from a decision of the Grand Junction District Office, Bureau of Land Management (BLM), dated May 28, 1991, determining the fair market rental value of land-use permit COC-50465 to be \$3,584 per year for the years June 28, 1985, through December 31, 1992. BLM explained that amounts currently due and payable total \$16,870 for the period June 28, 1985, to March 12, 1990, and \$6,471 for the period March 13, 1990, to the expiration date of the permit on December 31, 1992. BLM noted that a \$500 rental deposit had been submitted on March 5, 1990, pending determination of the fair market rental value, and allowed C Bar C 30 days from receipt of the decision to submit \$22,841.

On October 5, 1989, Hiram W. Lewis, Jr., filed an application for a land-use permit under section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1988). By decision

dated February 7, 1990, BLM offered a land-use permit as a means of resolving Lewis' unauthorized occupancy of approximately 4 acres of public land within lot 5, sec. 30, T. 1 S., R. 83 W., sixth principal meridian, Routt County, Colorado. The acreage encompasses that portion of lot 5 lying south and east of the centerline of Rock Creek. 1/

By decision dated March 15, 1990, BLM issued land-use permit COC-50465 to Lewis effective March 13, 1990, and terminating December 31, 1992. The permit's exhibit B describes the area granted as "an existing residence containing improvements consisting of two mobile/modular homes, an irrigation pump, settling pond, driveway, storage shed, outdoor storage area, and lawn." Exhibit B specifies that the holder is authorized to use the land for personal residential purposes only and that commercial use of the land is prohibited. Regarding rental, the permit states that the holder agrees to pay BLM fair market rental as determined by the authorized officer. The permit provides that it is issued subject to the holder's compliance with all applicable regulations contained in 43 CFR Part 2920.

By decision dated October 1, 1990, BLM approved an assignment by Lewis of land-use permit COC-50465 to appellant C Bar C. 2/ BLM informed appellant that the permit would be subject to all the original terms and conditions of the permit and to the regulations at 43 CFR Part 2920 which the permit incorporated by reference. BLM also advised C Bar C that the

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1/ BLM also informed Lewis that under 43 CFR 2920.1-2 persons determined to be using, occupying, or developing public lands, other than casual use, without authorization are liable to the United States for the fair market rental value for past years of trespass and penalties. BLM explained that because it had been determined that the unauthorized occupancy within the permit area was within an unauthorized agricultural use area that existed approximately 30 years prior to Lewis' purchase of the adjacent property and because the unauthorized use appeared to have been accidental, liability for penalties was waived. However, BLM stated, liability for fair market rental value for past years, dating to June 28, 1985, was required and would be determined through the appraisal.

2/ In a request for assignment dated July 13, 1990, Hiram Lewis' attorney explained that HML, Inc., d.b.a. Flat Iron Ranch, was the owner in fee simple of the property adjacent to the land covered by the permit and that Hiram W. Lewis, Jr., and Maire I. Lewis are the owners of HML, Inc. The attorney informed BLM that HML, Inc., had sold its interest in the fee simple property to C Bar C and that Hiram Lewis requested assignment of the permit to C Bar C. In a subsequent letter dated Aug. 15, 1990, requesting approval of this assignment, C Bar C informed BLM that it did not intend to use right-of-way C-36808 as an access road to the property and requested that this right-of-way be terminated.

assignee assumed liability for any and all monies owed, including fair market rental value for unauthorized past use dating to June 28, 1985.

The BLM appraiser conducted a site inspection of the property on February 28, 1991, with Terry Ivey, C Bar C's Manager. The appraiser noted that the use of the land consists of two mobile/modular homes and a portion of a third, and related facilities; that the two units on public land are currently unoccupied, with the third unit occupied by a ranch hand; that all three units are serviced by electricity, septic system, well water, propane gas, and an access road which are considered appurtenant to the land; and that, according to Ivey, the mobile homes were inadvertently placed on the public land in 1981 at which time septic systems were put in, electricity was run a short distance underground from adjacent private land and water was obtained from a nearby well on private land.

The appraiser stated that the most reliable indicators of value for a permit (or lease) are leases between private parties for the same or a similar purpose in the same market area as the subject, i.e., comparable rentals. The appraiser conducted a telephone market survey of six mobile home parks and private landowners in the vicinity. Her findings indicated a range in value from \$75 to \$210 per month per unit. The appraiser defined a unit as space sufficient to accommodate one mobile home and related facilities.

The appraiser explained that mobile home park space rentals (less than 0.5 acre and typically about 0.1 acre) ranged from \$75 to \$125 per month. According to the appraiser, while mobile home space rentals are not closely comparable to the subject 4-acre site, they do represent the lower range of similar market rentals. "These rentals represent competing properties and suggest that a renter of a mobile home site would follow the principle of substitution and seek a substitute space rental if the site rental greatly exceeded \$125/month," the appraiser explained. Two of the six comparables represent mobile home space rentals.

In addition to adjustments for location, services provided, physical characteristics, and size, the appraiser stated that an adjustment was made for tenure. The appraiser noted that a comparison of the subject permit terms and conditions with typical private rental-site agreements indicates that the rights to residential use and enjoyment of the subject site are quite similar, with the exception of tenure. The appraiser pointed out that the permit tenure is for a 3-year term while all private comparables are rented on a monthly basis with no future commitments. She concluded that the subject permit is considered superior to the comparable site rentals for tenure because the permittee can cancel the permit upon notice.

while BLM can only cancel for failure to comply with the terms of the agreement. <sup>3/</sup>

The appraiser stated that the indicated monthly unit rental of the subject site was shown to be bracketed by rentals three and four at \$150 and \$125 respectively. She explained that while this indicated a monthly unit rental value above \$125, consideration of competing space rentals indicated that an informed renter would consider relocating to a space rental at \$125 per month. Similarly, she noted, the market evidence indicated that an informed landowner would accept no less.

The appraiser concluded that, all factors considered, the estimated fair market rental of the subject 4-acre site was \$125 per unit per month with no adjustments for past years rental since the market study revealed little or no rental adjustments between 1985 and the present. <sup>4/</sup> The appraiser explained that since all private rentals located required advance monthly payments, the comparable rental is adjusted to an annual equivalent by computing the beginning of year worth of a series of 12 monthly payments at a 10-percent discount rate:

$$\begin{aligned} \$125/\text{unit}/\text{mo.} \times 2.5 \text{ units} &= \$312.50/\text{mo.} \\ \text{PV of } \$312.50/\text{mo.} @ 10\% \text{ for 12 months} &= \$3,584/\text{yr.} \end{aligned}$$

The appraiser's report was reviewed and approved by the Chief State Appraiser, Al Wagner, Jr., on March 19, 1991. BLM's May 28, 1991, decision determining the annual fair market rental value to be \$3,584 occasioned this appeal.

In its statement of reasons, C Bar C contends that BLM's appraisal method is flawed, resulting in a rental determination greatly in excess of the market rental value for the land-use permit. Appellant argues that BLM's appraisal assumes that leases between private parties for the same or similar purpose are the most reliable indicator of value for a permit and that leases for mobile home park spaces represent the appropriate comparable data. Thus, BLM has assumed it has rented mobile home park spaces to

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<sup>3/</sup> However, condition 1 of permit COC-50465 states that the permit is revocable at the discretion of BLM at any time upon notice.

<sup>4/</sup> The appraiser made the following observation regarding rental values for a portion of a unit:

"While rental values for a portion of a unit are not found in the market, it is reasonable to assume that the market would recognize some value for this use. Rental 6 indicates a value of \$75/month, less services provided, for the smallest space available. It, therefore, is deemed appropriate to charge one half of the monthly unit rental (\$62.50) for the third unit which is partially located on public land."

C Bar C. BLM's assumption is flawed, C Bar C asserts, because land-use permit COC-50465 is an authorization for use of land, not rental of mobile home park space. Appellant further points out that BLM does not provide utilities (electricity, septic system, water), whereas landlords in mobile home parks do provide access to utilities, a primary element of the value of the lease.

C Bar C notes that the permit prohibits commercial use of the land, thus precluding use of the land as a mobile home park, and states that it is not using the land as a commercial mobile home park. C Bar C also notes that the permit provides that the public may use the permit area, thus substantially decreasing the rental value of the land and distinguishing the permit from a lease of mobile home park space, which grants the tenant exclusive use of the land. Appellant further states that BLM's appraisal did not deal with the issue of access and notes that the only access to the permitted land is through C Bar C's private property, *i.e.*, no public access to the permitted land exists. C Bar C asserts that this lack of access calls for a substantial reduction in value from comparable properties because all mobile home trailer spaces have access to public roads and usually have highway frontage.

Accompanying appellant's statement of reasons is an appraisal prepared by Applegate and Company for a land exchange originally proposed by HML, Inc., which included the permitted lands. The exchange was never completed. The appraisal values the land in question at \$500 per acre.

Using a capitalization rate of 10 percent C Bar C understood BLM employs to determine rental values, C Bar C calculates that the 4 acres in question would have a rental value of \$200 per year. Total rental for the period June 28, 1985, to December 31, 1992, would be \$1,500, appellant estimates, and a balance of \$1,000 would be owed after credit is allowed for its \$500 rental deposit. C Bar C concludes that BLM's decision requiring payment of \$22,841 is a demand for C Bar C to pay for the value of the land many times over.

In response BLM claims that all of the comparable rentals in its appraisal are either very nearly the same as the subject rental or have been properly adjusted to reflect the differences. BLM argues that C Bar C's appraisal is out-of-date and was prepared for an entirely different purpose for different land—a possible exchange with BLM which was never consummated. Accompanying BLM's response is a memorandum dated July 17, 1991, by Al Wagner, Jr., Chief State Appraiser, BLM.

Wagner states that the preferred method for appraising fair market rental value of nonlinear rights-of-way, site leases, and permits is the comparable lease method when sufficient comparable rental data exists. Wagner agrees that the land-use permit authorizes personal residential use, not commercial use, and notes that the 4-acre permit area is an existing

residence consisting of two mobile/modular homes, a portion of a third, and related facilities. The principle of substitution, Wagner explains, holds that the value of a property that is replaceable in the market tends to be set by the cost of acquiring an equally desirable substitute property (July 17, 1991, Memorandum at 1). Thus, BLM has "attempted to establish rental value by determining the cost of acquiring reasonable alternative or substitute space for the existing mobile/modular homes."

The comparable rentals include rural mobile home sites as well as space rent in established mobile home parks. While the rural sites are more comparable, the rental spaces do represent a reasonable, although somewhat less desirable, alternative or substitute place to park the mobile/modular homes. This appraisal methodology was used and affirmed by IBLA [Interior Board of Land Appeals] (Clinton Impson, IBLA 87-36 ([Order of Sept. 21,] 1987)) in the reappraisal of a 1.46 acre residential occupancy permit near Placerville, Colorado.

(July 17, 1991, Memorandum at 2). "We have never \* \* \* implied that the site is a commercial mobile home park. The use is specified as personal residential use by the land use permit, and was valued as such using the comparable lease method." Id.

Regarding C Bar C's argument that BLM does not provide utilities, Wagner states:

Septic, water and electricity were all in place at the time C Bar C acquired the property in July 1990. Adjustments have been made to reflect the difference in services provided by the comparable leases and the subject. Leases 3, 4 and 5 are considered to be quite similar to the subject in services provided. In Lease 3, the lessee developed the site including power, water, septic and access. On Leases 4 and 5, the lessee pays his own utilities, much like the subject. The subject is considered inferior to Leases 1, 2 and 6 in services provided as the lessor pays for all or a major portion of the utilities on these leases. The BLM has recognized and addressed the difference in utilities, or services, provided.

Concerning C Bar C's argument that the public may use the permit area, Wagner points out that the permit authorizes use by the general public "in any way compatible or consistent with the authorized land use." He states that BLM's policy has been not to authorize other uses which would be incompatible with a permittee's right of full use and enjoyment of a permitted area (July 17, 1991, Memorandum at 2). Wagner notes that

access to the permitted area is through C Bar C's private property, thereby restricting the general public's access and subsequent use of the area.

The appraisal did not deal with the access issue, Wagner explains, because use of the permit area was for personal, not public, purposes and C Bar C had access to the site by means of a road through its adjacent private property, a road which existed at the time C Bar C acquired the property in July 1990.

Wagner finds various problems with the Applegate appraisal. He states that the appraisal was prepared in July 1987 and does not reflect current fair market value; that there is a substantial size differential in the Applegate appraisal of a 160-acre parcel and the permitted use appraisal of a 4-acre parcel; that there is a significant difference in the purpose of the Applegate appraisal, a proposed exchange, and the BLM appraisal, a land-use permit; that the Applegate appraisal did not meet agency standards and was not approved or accepted by BLM; and that the preferred method of estimating fair market rental value is the comparable lease method, where sufficient comparable data exist, and not the percentage of land value to which C Bar C refers.

C Bar C has submitted a statement in rebuttal to the Government's answer in which it emphasizes that the Applegate appraisal included the permitted area. Appellant reiterates its contention that BLM's appraisal is flawed because it values the subject property by comparing it to commercial uses—specifically, mobile home park space rentals—when such uses are prohibited by the permit. C Bar C also stresses that BLM's appraisal ignores the fact that the permit authorizes the use of land only; that C Bar C owns all improvements and utilities located on the subject land; and that there is no access to the permit area except through C Bar C's private property, which makes a comparison to mobile home space with a right of access erroneous. Finally, appellant contends that BLM's position is extremely unfair because the agency is trying to charge more per acre for 1 year's rent than the land is worth for the fee interest.

[1] Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), authorizes the Secretary to issue permits for various uses of the public lands including residential occupancy. Applicable regulations are found at 43 CFR Part 2920. These regulations require that land-use authorizations be issued only at fair market value and only for uses that conform with BLM plans, policy, objectives, and resource management programs. 43 CFR 2920.0-6(a). Under 43 CFR 2920.1-1, BLM may authorize "[a]ny use not specifically authorized under other laws or regulations and not specifically forbidden by law," including "residential, agricultural, industrial, and commercial" uses. Sierra Production Service, 118 IBLA 259 (1991); see also Steve Medlin, 115 IBLA 92 (1990). 43 CFR 2920.1-2 provides that any

use, occupancy, or development, other than casual use, without authorization shall be considered a trespass. A person in trespass shall be liable to the United States for the administrative costs incurred by the United States as a consequence of such trespass and the fair market rental value of the lands for the current year and the past years of trespass. 43 CFR 2920.1-2(a).

Fair market value of the 4-acre parcel at issue was determined by BLM in its appraisal report approved March 19, 1991. Our general rule is that an appraisal will be affirmed if there is no error in the appraisal method used by BLM or appellant fails to show by convincing evidence that the charge is excessive. Sierra Production Service, *supra* at 263; Phyllis E. Lewis, 113 IBLA 376 (1990); Gerald L. Overstreet, 112 IBLA 211 (1989); Lawrence Dupuis, 99 IBLA 174 (1987); Lone Star Steel Co., 79 IBLA 345 (1984). Although we generally approve of submitting an independent appraisal as a means for an appellant to meet the burden of showing error in BLM's appraisal, Burton A. & Mary H. McGregor, 119 IBLA 95, 105 (1991), we note that "[s]ales involving the exchange of property are generally considered unreliable for use in the comparable sales approach." Uniform Appraisal Standards (1973) at 10. For this reason and those set forth in Wagner's July 17, 1991, Memorandum, the Appellate appraisal submitted by appellant is not persuasive that BLM's appraisal is erroneous.

Nor are we persuaded by appellant's other arguments. As BLM's answer explained, it did not appraise the permitted area as though it were a mobile home park; rather, it included two mobile home parks along with four other rural parcels rented for mobile homes in its sample of comparable properties upon which to base a fair market rental. The utilities on the permitted area were compared to those on these comparable properties and were thereby taken into account in establishing the rental value. The fact that C Bar C in fact has access to the permitted area through its own land, although the public does not, disposes of the need to discount the value of the permitted land for lack of access, since the area is for personal residential use, not public use. Presumably, C Bar C is not going to deprive itself of access to the area through its own land. Nor does the fact that the rental value per acre exceeds the price for purchasing similar acreage in fee, assuming it is fact, as C Bar C states, mean that the rental value is necessarily wrong. The argument is based on an assumption that the purchase price for a piece of land establishes a ceiling that cannot be exceeded in any case. See Texaco Trading & Transportation Inc., 128 IBLA 239, 240-41 (1994). In any event, the rental value BLM established is based on the appraisal report of rentals of comparable properties. We conclude that appellant has not demonstrated error in BLM's appraisal method or shown by convincing evidence that the charge is excessive.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Will A. Irwin  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge